

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HOWARD RAFAL,
ANDERS ECKMAN, and SIDNEY PROBSTEIN

Appeal 2006-3144
Application 09/778,281
Technology Center 2100

Decided: May 25, 2007

Before JAMES D. THOMAS, JOSEPH F. RUGGIERO, and ALLEN R. MACDONALD, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1-12. We have jurisdiction under 35 U.S.C. § 6(b).

Appellants' claimed invention relates to a method of creating and hosting customized online gatherings in which one or more server computers communicate via the Internet with user operated Web browsers.

We affirm.

Claim 1 is illustrative of the invention and it reads as follows:

1. The method of using the Internet to create and host a customized online gathering of participants which occurs at a scheduled time comprising, in combination, the steps of:

providing at least one server computer connected to the Internet for communicating with a plurality of client computers operated by users which are also connected to the Internet,

storing at said server computer:

a) template data defining one or more template web pages, each of said template web pages implementing a predetermined activity in which said users may participate as part of said online gathering,

b) an identification of said first user as the host of said online gathering,

c) a guest list accepted from said first user identifying a plurality of other invited users,

d) a specification of a scheduled time or scheduled time range during which the online gathering will occur, and

e) customization data accepted from said first user,

combining said template data and said customization data to create customized web pages which together implement said customized online gathering,

establishing at said scheduled time or during said scheduled time range an authorized connection via the Internet between said server computer and each of said invited users that choose to participate in said gathering and,

responding to requests received from any given one of said invited users during said online gathering by transmitting to said given user a requested one of said customized Web pages.

The Examiner relies on the following prior art references to show unpatentability:

Tatham	US 6,223,177 B1	Apr. 24, 2001 (filed Nov. 19, 1998)
Maurille	US 6,484,196 B1	Nov. 19, 2002 (filed Mar. 20, 1998)
Sluiman	US 6,590,589 B1	Jul. 8, 2003 (filed Nov. 29, 1999)

Claims 1-12 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner offers Tatham in view of Maurille with respect to claims 1, 2, 6-10, and 12, and adds Sluiman to the basic combination with respect to claims 3-5 and 11.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs and Answer for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed waived [see 37 CFR § 41.37(c)(1)(vii)].

ISSUE

Under 35 U.S.C § 103(a), has the Examiner established a prima facie case of obviousness based on Tatham taken in combination with Maurille with respect to claims 1, 2, 6-10, and 12 with the further addition of Sluiman with respect to claims 3-5 and 11?

PRINCIPLES OF LAW

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to Appellant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); and *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

ANALYSIS

With respect to independent claims 1 and 8, Appellants' arguments in response to the Examiner's 35 U.S.C. § 103(a) rejection initially assert a failure by the Examiner to establish a *prima facie* case of obviousness since all of the claimed limitations are not taught or suggested by the applied prior art references. In particular, Appellants focus on the alleged deficiency of Tatham in disclosing the claimed feature of storing template data defining template web pages which implement activities for user participation. According to Appellants (Br. 9-10; Reply Br. 3-4), the workgroup creation template 170 of Tatham referenced by the Examiner is merely a fill-in-the blanks form completed by a user to create a workgroup.

As explained by the Examiner (Answer 11-12), however, in the showing of correspondence with the claimed subject matter, Tatham's disclosure (col. 4, ll. 55-60) of the workgroup creation template 10 is used along with the disclosure of the dedicated site 180 which, in the terminology used by Tatham, is considered a customizable private office suite (Tatham, col. 4, ll. 19-34 and col. 4, ll. 66 through col. 5, ll. 26). With this in mind, we see no error in the Examiner's finding that the workgroup creation template 170 in Tatham is a template which defines web pages since it is used to create the private office suite.

It is further our view that the ordinarily skilled artisan would recognize and appreciate, from Tatham's description of the applications contained in the private office suite, that such customizable private office suite contains web pages which implement activities for user participation. As just one example, the project collaboration tool included in Tatham's private office suite is described as providing a "Web sit(sic) environment for

creating , implementing and managing projects.” (Tatham, col. 6, ll. 53-57, and Fig. 3D).

We also find no error in the Examiner’s establishment (Answer 4) of proper motivation for adding the conference time scheduling features of Maurille to the group conferencing teachings of Tatham. As pointed out by the Examiner (Answer 13), Appellants’ arguments (Br. 10) do not attack the Examiner’s assertion of obviousness to the ordinarily skilled artisan of adding a time scheduling application to Tatham’s private office suite of applications. Instead, Appellants’ arguments rely on those previously made regarding the alleged deficiency of Tatham in disclosing a template of customizable web pages, which arguments we found to be unpersuasive for all of the reasons discussed *supra*.

For the above reasons, since it is our opinion that the Examiner’s *prima facie* case of obviousness has not been overcome by any convincing arguments from Appellants, the Examiner’s 35 U.S.C. § 103(a) rejection, based on the combination of Tatham and Maurille, of independent claims 1 and 8, as well as dependent claims 2, 7, 9, and 12 not separately argued by Appellants, is sustained.

Turning to a consideration of the Examiner’s 35 U.S.C. § 103(a) rejection of separately argued dependent claims 6 and 10 based on the combination of Tatham and Maurille, we sustain this rejection as well. We find no error in the Examiner’s position (Answer 15-16) that the disclosure of Maurille describes the collaboration of web servers as claimed. We are further of the opinion that the ordinarily skilled artisan would recognize and appreciate that the suite of applications provided in the private office suite of

Tatham, such as the collaboration tool illustrated in Tatham's Figure 3D, would be provided by servers acting in collaboration with each other.

Lastly, we also sustain the Examiner's obviousness rejection of dependent claims 3-5 and 11 in which the predetermined default values' teaching of Sluiman is added to the combination of Tatham and Maurille. Initially, Appellants' arguments (Br. 11-12; Reply Br. 4-5) to the contrary notwithstanding, we fail to see why Tatham's workgroup creation disclosure (col. 4, ll. 55-65) in which the user identification of workgroup members, applications to be used, project scope, etc. would not be considered to correspond to the claimed "gathering type," "occasion," or "theme." It follows, then, that the application of Sluiman's customized default value teaching to the system of Tatham as modified by Maurille, and we find no persuasive arguments from Appellants attacking the proposed combination, would result in the invention as set forth in appealed claims 3-5 and 11.

Appeal 2006-3144
Application 09/778,281

CONCLUSION

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejections of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-12 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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